

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Galveston Division

_____	)	
TEXAS DEPARTMENT OF CRIMINAL	)	
JUSTICE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:17-cv-00001
	)	
UNITED STATES FOOD AND DRUG	)	
ADMINISTRATION, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' RESPONSE IN OPPOSITION  
TO PLAINTIFF'S MOTION TO LIFT STAY**

Pursuant to Rule 7 of the Court's local rules, defendants, the United States Food and Drug Administration, *et al.*, respectfully submit this response in opposition to the motion to lift the administrative stay of this case submitted by plaintiff, the Texas Department of Criminal Justice (Texas). *See* Pl. Mot. Lift Stay, Jan. 8, 2018, ECF No. 53. As we explain below, lifting a stay of this case would be premature.

The Court ordered a stay in this case on December 4, 2017, shortly after we filed a motion seeking a second extension of time to consider the Government's position. *See* Def. Mot. Ext., Nov. 21, 2017, ECF No. 51. The Government continues to explore possible options for resolving this lawsuit—potentially obviating the need for the Court to issue a decision. To allow that work to proceed, we believe that it is necessary to maintain the administrative stay of this case.

Texas asserts that it is being prejudiced by the continued stay of this matter. But it has not articulated any imminent harm it stands to suffer if the Government is afforded more time to deliberate. Texas has not claimed, for example, that it wishes to use the sodium thiopental it is seeking to import in any imminent execution. In fact, Texas has been using a different drug, pentobarbital, in executions for more than five years, and has used that drug in seven executions while this lawsuit has been pending. *See* Death Penalty Information Center, <https://deathpenaltyinfo.org/execution-list-2017> (last visited Jan. 29, 2018). By its own admission, Texas is seeking sodium thiopental as a “contingency” in the event that pentobarbital becomes unavailable. *See* AR 299.<sup>1</sup> That fact should counsel in favor of preserving the status quo and keeping the case stayed.

For these reasons, we respectfully request that the Court maintain the stay it imposed in its December 4, 2017 order and suggest providing status reports to the Court every 30 days. If the Court wishes to lift the stay, however, we respectfully request that it afford us sixty days from the date of any such order to file our response to Texas’s motion for summary judgment (instead of the 21 days suggested by Texas in its motion). That additional time would promote judicial economy and conserve the parties’ resources by increasing the chances that the case would be resolved without the need for intervention by the Court.

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<sup>1</sup> “AR” refers to the corresponding page in the administrative record.

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

ETHAN P. DAVIS  
Deputy Assistant Attorney General

GUSTAV W. EYLER  
Acting Director

ANDREW E. CLARK  
Assistant Director

s/ Alexander V. Sverdlov  
ALEXANDER V. SVERDLOV  
Trial Attorney  
Consumer Protection Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 386  
Ben Franklin Station  
Washington, DC 20044  
Tel: (202) 307-0138  
Fax: (202) 514-8742

January 29, 2018

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
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	)	
Defendants.	)	
_____	)	

**[PROPOSED] ORDER**

Upon consideration of the plaintiff's motion to lift the stay in this case and set a briefing schedule, and upon due deliberation, it is hereby

ORDERED that the motion is denied; it is further

ORDERED that the stay imposed in this case on December 4, 2017 shall remain in effect; and it is further

ORDERED that defendants shall file status reports every 30 days.

SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. GEORGE C. HANKS, JR.  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this 29th day of January, 2018, a copy of the foregoing “DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO LIFT STAY” was filed electronically. This filing was served electronically to all parties by operation of the Court’s electronic filing system.

s/ Alexander V. Sverdlov